

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 6, 2005

D046246 People v. Walker

The judgment is affirmed. McConnell, P.J.; We Concur: McIntyre, J., Irion, J.

D045067 Adoption of Joshua S., a Minor

The order granting attorney fees is reversed. CERTIFIED FOR PUBLICATION
Benke, Acting P.J.; We Concur: Nares, J., McDonald, J.

D046497 In re Alyssa O, a Juvenile

The April 14, 2005 findings and orders are reversed. This matter is remanded to the juvenile court, with directions that it order the Agency to give proper ICWA notice to Mother, the BIA and the federally recognized Chippewa tribes in a timely manner before the next hearing, set for October 13. If, after notice is given and received, no Indian entity seeks to intervene or otherwise indicates that Alyssa is an Indian child as defined by ICWA, the court shall reinstate the April 14 findings and orders. If, on the other hand, after proper notice an Indian entity determines Alyssa is an Indian child under ICWA, the court shall proceed in accordance with ICWA. The remittitur is to issue forthwith. (Cal. Rules of Court, rule 20(c)(2.). Haller, J.; We Concur: McConnell, P.J., Huffman, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 7, 2005

D045151 RJS Industries Inc., et al. v. Blakely, Sokoloff, Taylor & Zafman et al.

Appeal dismissed. Each party to bear its own costs of appeal. Benke, J.; We Concur: McConnell, P.J., Nares, J.

D044941 Wal-Mart Real Estate Business Trust v. City Council of the City of San Marcos/Drake et al./Brookfield University Commons LLC.

The order is reversed insofar as it denies Drake and Walton's motion for attorney fees under section 1021.5 from Wal-Mart. The matter is remanded to the trial court for a new hearing on the amount of an award. The award shall include attorney fees incurred on appeal. In all other respects, the order is affirmed. Drake and Walton are awarded costs of appeal from Wal-Mart. The City and Brookfield are awarded cost of appeal from Drake and Walton. CERTIFIED FOR PUBLICATION. McConnell, P.J.; We Concur: Haller, J., McDonald, J.

D046283 In re Nicholas B., a Juvenile

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Haller, J.

D045356 In re Jesus S., a Juvenile

The order committing Jesus to CYA is reversed and the matter is remanded to the trial court with directions to conduct a new dispositional hearing. McDonald, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D044095 People v. Ash

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Irion, J.

D043383 Castaneda v. Olsher et al.

The judgment of the trial court is reversed and the case is remanded for trial. At the conclusion of the trial, the court shall instruct the jury that a property owner who is aware of ongoing criminal gang activity occurring on his property has a duty to take reasonable and appropriate measures to attempt to protect residents from potential gang violence. Appellant is awarded costs on appeal. CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: McIntyre, J., Irion, J.

D045529 Ligand Pharmaceuticals, Inc. v. Ross

The order is affirmed. Ross is entitled to costs on appeal. McConnel, P.J.; We Concur: Huffman, J., Aaron, J.

D045276 In re Marriage of Johanesen

The order is reversed with directions to issue a new order directing Robert to pay Teresita one-half of the proceeds received from all of his retirement account. Costs are awarded to Teresita. Huffman, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D045868 People v. Tran

The judgment is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 7, 2005 (Continued)

D046888 Heather J. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Heather J. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case as to Heather J. is dismissed.

D046965 Kehl v. The Superior Court of San Diego County/The People

The petition is denied.

D046502 In re Chen on Habeas Corpus

The petition is denied.

D045978 In re A. G., a Juvenile

The petition for rehearing is denied.

D042817 Western Pet Wholesalers, Inc. v. Natura Pet Products, Inc.

The petitions for rehearing are denied.

D046964 In re Hooper on Habeas Corpus

The petition is denied.

D047048 In re Consiglio on Habeas Corpus

The petition is denied as duplicative of the petition filed in case number D046782.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 8, 2005

D047049 In re Consiglio on Habeas Corpus

The petition is denied as duplicative of the petitions filed in case numbers D046862 and D046952.

D044641 People v. Hayes

The appeal is dismissed. Benke, J.; We Concur: McConnell, P.J., Irion, J.

D045915 In re Merrick V., et al. Juveniles

Judgment affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Irion, J.

D044869 Williams v. Hannigan

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17 (a).
The appeal is dismissed.

D045150 Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.

The motion to dismiss the portion of this appeal challenging the December 2003 judgment of dismissal in favor of the individual members of the Committees is granted. The June 2004 judgment is reversed as to the Association's claims for declaratory relief, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, breach of agreement, quiet title, accounting and injunctive relief as alleged in the third amended complaint against the Developer and the Committees. In all other respects, the June 2004 judgment is affirmed. The Association is entitled to recover costs of appeal against the Developer and the Committees; the individual members of the Committees are entitled to recover their costs of appeal against the Association. The matter is remanded for further proceedings consistent with this opinion. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D043994 People v. Owens

The appeal is dismissed in light of the disposition in the writ proceeding, in re Jamie Owens on habeas corpus (D045194).

D045194 In re Owens on Habeas Corpus

The judgment is vacated and the matter remanded to the superior court for further proceedings.
McConnell, P.J.; I Concur: Nares, J., I respectfully dissent: O'Rourke, J.

D045675 In re Lloyd M., a Juvenile

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Irion, J.

D045376 In re Masters on Habeas Corpus

The Department is directed to strike the requirement that Masters register as a sex offender as a condition of parole based on his 1959 Iowa conviction. Benke, Acting P.J., We Concur: Nares, J., Haller, J.

D045397 People v. Vigil

The restitution order is affirmed. Haller, Acting P.J.; We Concur: McDonald, J., Irion, J.

D046137 In re M. C. et al., Juveniles

Judgment affirmed. O'Rourke, J.; We Concur: Haller, Acting P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 9, 2005

D047052 In re Moore on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and the Honorable Associate Justices Patricia Benke and Cynthia Aaron.

D046064 Campbell v. Superior Court

Matter called on merits. David Brian Reider, Esq. argued for petitioner. Thomas E. Polakiewicz argued for real party in interest. Mr. Reider replied. Matter submitted.

Court recessed at 9:27 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and the Honorable Associate Justices Gilbert Nares and Cynthia Aaron.

D044764 Wittmack et al. v. Federal Insurance Company et al.

Cause called on merits. Charles S. Li Mandri, Esq. argued for appellants. Stephen Lynn Newton, Esq. argued for respondent Federal Insurance Company. Edmund G. Farrell III, Esq. argued for respondent Murchison & Cumming. Mr. Li Mandri replied. Cause submitted.

Court recessed at 10:09 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and the Honorable Associate Justices Cynthia Aaron and Joan Irion.

D044807 Renko v. Covington

Cause called on merits. Wayne Templin, Esq. argued for appellant. Carl Fabian, Esq. argued for respondent. Alex B. Scheingross, Esq. appeared as co-counsel for respondent but did not argue. Mr. Templin replied. Cause submitted.

Court recessed at 10:33 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice and the Honorable Associate Justices Cynthia Aaron and Joan Irion.

D045025 Sanchez v. Children's Hospital and Health Center

Cause called on merits. Rod M. Toothacre, Esq., argued for appellant. Lisa Wilhelm Cooney, Esq. argued for respondent. Mr. Toothacre replied. Cause submitted.

Court recessed at 10:52 a.m.

D045149 In re the Marriage of Brandwein

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 9, 2005 (Continued)

D047073 Wright v. Superior Court of County of Imperial/People
The petition is denied.

D047003 In re Vega on Habeas Corpus
The petition is denied.

D046004 In re Simonton on Habeas Corpus
Petitioner's unopposed motion for judicial notice of the appellate record and for provision of the record on appeal to counsel is granted. Petitioner's counsel is directed to contact the clerk's office on or before September 14, 2005 to make arrangements to obtain the appellate record.

D046004 In re Simonton on Habeas Corpus
Respondent's application for an extension of time to file a return to the order to show cause is granted. Respondent's return must be filed on or before September 30, 2005. No further extensions will be permitted.

D047047 In re Consiglio on Habeas Corpus
The petition is denied as duplicative of the petitions filed in case numbers D046860 and D046951.

D044838 People v. Cantrell
The judgment is affirmed. McConnell, P.J.; We Concur: O'Rourke, J., Irion, J.

D044637 People v. Rogers
The judgment is affirmed, except that the imposition of one of the two 5-year enhancements under Penal Code section 667, subdivision (a) is reversed. The matter is remanded with directions that the trial court strike one of those two enhancements and amend its abstract of judgment to reflect the imposition of only one 5-year enhancement under Penal Code section 667, subdivision (a). McDonald, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D047046 Lewis v. The Superior Court of San Diego County/The People
The petition is denied.

D046538 Monica G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency
The petition for rehearing is denied.

D044362 Milhous et al. v. Franchise Tax Board
The request for publication of the opinion is denied.